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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1941

No. 1213

ROY E. AMMOND,
Petitioner,

vs.

THE PENNSYLVANIA RAILROAD COMPANY,
and
H. F. EMERSON,
Respondents.

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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Leslie Wheaton Publisher, Cincinnati, Ohio

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.**

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*To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:*

**Summary Statement of Matter Involved**

This case involves several questions:

(1) Is a federal district court bound by the construction of a state statute by a court of original jurisdiction of the same state, in the absence of an interpretation by any other court of the state, for the purpose of determining whether a controversy is separable?

(2) May a federal district court enjoin the enforcement of a judgment rendered in the state court?

This suit originated by the filing by the present petitioner of an action in tort for personal injuries sustained as a result of alleged negligent conduct of the respondents in the Court of Common Pleas of Stark County, Ohio. (R. 3) The Respondents were sued jointly as joint tort feasors. Respondents filed a Petition for Removal to the District Court for the Northern District of Ohio, Eastern Division. (R. 9) Said Petition for Removal was denied (R. 12), the Common Pleas Court construing Section 8856, Ohio General Code, (Appendix 1) as permitting respondents to be sued jointly, and respondent, H. F. Emerson, being a citizen of Ohio, there was no separable controversy wholly between citizens of different states.

Thereupon, respondents filed certified copies of all the pleadings and order overruling the Petition for Removal, in the District Court. Petitioner duly filed a motion to remand in the District Court. (R. 19) Said motion to remand was denied. (R. 20) The state court proceeded to give judgment in favor of Petitioner (R. 60), from which no appeal was taken. Prior to the entry of said judgment in the state court, respondents filed on ancillary complaint in the District Court (R. 20) asking that the present petitioner be enjoined from proceeding in the state court on his motion for judgment. After the state court entered judgment, respondents filed a supplemental ancillary complaint, asking that the present petitioner be enjoined from enforcing the state court judgment (R. 26), and such an order was entered July 10, 1940 (R. 33).

Notice of appeal to the Circuit Court of Appeals for the Sixth Circuit was duly filed (R. 61). The cause was argued and submitted December 11, 1941, and on February 10, 1942, the Court of Appeals affirmed the decree of the District Court.

This is a petition for writ of certiorari to review the decree of the Circuit Court of Appeals for the Sixth Circuit.

**REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT**

Aside from the importance of the question herein involved as affecting state courts and their power to construe their own statutes, we submit that the decrees of the District Court for the Northern District of Ohio, and of the Circuit Court of Appeals for the Sixth Circuit were clearly erroneous and not in accord with the applicable decisions of this Court.

Insofar as the decrees below sustain the position that the District Court was correct in assuming jurisdiction of this cause, they are not in accord with the following cases, among others:

*Chgo., R. I. & Pac. R. Co.* v. *Schwyhart,* 227 U. S. 184;
*Alabama Great Southern R. Co.* v. *Thompson,* 200 U. S. 206;
*West* v. *A. T. & T. Co.,* 311 U. S. 223;
*MacGregor* v. *State Mutual Life Assurance Co.,* decided February 16, 1942, 86 L. Ed. 559;
*Fidelity Union Trust Co.* v. *Field,* 311 U. S. 169.

Insofar as the decrees of the Courts below sustain the power of the District Court to enjoin Petitioner from enforcing the judgment of the state court, they are not in accord with:

*Metropolitan Casualty Co.* v. *Stevens,* 312 U. S. 563;
*Chesapeake & Ohio Railway Co.* v. *White, Admr.,* 111 U. S. 134.

In the interest of brevity (Rule 38, Par. 2), Petitioner does not at this time set forth all of the points which will

be urged at the argument on the merits of this cause, should the writ be granted, nor all of the contentions in support of such points, but Petitioner here refers to and incorporates into this petition all of the matters presented in its assignments of errors contained in the supporting brief filed herewith, as if fully set out herein.

WHEREFORE, your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that court to certify and to send to this court for its review and determination, on a day certain to be therein named, a transcript of the record, and proceedings, herein; and that the decree of the United States Circuit Court of Appeals for the Sixth Circuit be reversed, and the decree of the District Court for the Northern District of Ohio be reversed, by this Honorable Court, and for such other relief as to this Honorable Court may seem just and proper.

E. L. MILLS,
VIRGIL F. MILLS,
D. BRUCE MANSFIELD,
of
AMERMAN, MILLS, MILLS,
JONES & MANSFIELD,
*Counsel for Petitioner.*

**APPENDIX**

Section 8856, General Code of Ohio:

"LIABILITY OF COMPANY. The company in whose employ such engineer or person in charge of an engine is, as well as the person himself, shall be liable in damages to a person or company injured in person or property by such neglect or act of such engineer or person."